

ESTTA Tracking number: **ESTTA159877**

Filing date: **08/30/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Id Software, Inc.
Granted to Date of previous extension	09/01/2007
Address	3819 Town Crossing, Suite 222 Mesquite, TX 75150 UNITED STATES
Attorney information	D. Wade Cloud, Jr. Hiersche, Hayward, Drakeley, Urbach PC 15303 Dallas Parkway, Suite 700 Addison, TX 75001 UNITED STATES wcloud@hhdulaw.com Phone:(972) 701-7013

Applicant Information

Application No	77081425	Publication date	07/03/2007
Opposition Filing Date	08/30/2007	Opposition Period Ends	09/01/2007
Applicant	Daniel, Sayo Isaac 848 Brickell Key Drive, #3402 Miami, FL 33131 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. Opposed goods and services in the class: electronic game software for cellular telephones

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2165125	Application Date	08/26/1996
Registration Date	06/16/1998	Foreign Priority Date	NONE
Word Mark	ID		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 009. First use: First Use: 1996/07/22 First Use In Commerce: 1996/07/22 computer games, computer game programs, and electronic games
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Attachments	Notice of Opposition.pdf (4 pages)(26510 bytes)
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Signature	/dwc/
Name	D. Wade Cloud, Jr.
Date	08/30/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ID SOFTWARE, INC.,	§	In the Matter of Trademark
	§	Application Serial No. 77/081425
Opposer,	§	
	§	For the Mark:
vs.	§	ID PHONE
	§	
SAYO ISAAC DANIEL	§	Published in the Official Gazette on
	§	July 3, 2007
Applicant.	§	Opposition No. _____

NOTICE OF OPPOSITION

COMES NOW, Id Software, Inc., Opposer, and opposes the trademark application (the "Application") for ID PHONE filed by Sayo Isaac Daniel, Applicant, and respectfully asserts the following:

PARTIES

1. Opposer is a Texas corporation located at 3819 Town Crossing, Suite 222, Mesquite, Texas 75150.
2. Applicant, on information, is an individual residing at 848 Brickell Key Drive, #3402, Miami, Florida, 33131.

FACTUAL BACKGROUND

3. Opposer, a developer of computer software games and computer game programs, is the owner of ID (the "ID Mark") which is registered with number 2165125 with the United States Patent and Trademark Office.
4. The ID Mark was registered on June 16, 1998, in IC 009 for "computer games, computer game programs, and electronic games."

5. Applicant filed his Application to register ID PHONE on January 18, 2007 as an intent to use Application. The Application was published for opposition on July 3, 2007. Opposer filed a timely request for extension to file opposition and Opposer's request was granted by the Trademark Trial and Appeal Board (the "TTAB") thereby extending the opposition period to September 1, 2007.

6. Opposer has used the ID Mark on or in connection with computer software games and computer game programs on a valid and continuous basis since at least as early as July 22, 1996. The computer games have appeared in both PC and video game console versions. In addition, some of Applicant's electronic computer games have been ported to operate on the cellular telephone platform. The ID Mark has not been abandoned and its registration continues in full effect.

7. Opposer has established substantial goodwill in the ID Mark and the ID Mark is identified exclusively with Opposer and Opposer's computer software games and computer game programs, as well as related goods such as strategy guide books and computer game instruction manuals.

8. Applicant, based upon his Application, is seeking registration of ID PHONE in IC 009 for "electronic game software for cellular telephones" and other goods. Opposer opposes registration of ID PHONE for "electronic game software for cellular telephones" but does not assert opposition as to the other goods Applicant describes in his Application.

9. Applicant, based upon his Application, clearly intends to use ID PHONE to identify goods, namely "electronic game software for cellular telephones," that are identical in type and class to those goods on or in connection with which Opposer already has used the registered ID Mark.

10. Opposer would show that Opposer will suffer damages, including, without limitation, the loss of goodwill, unless ID PHONE is refused registration as to “electronic games software for cellular telephones.”

CLAIMS / GROUNDS FOR OPPOSITION

A. Prior Use.

11. Opposer incorporates paragraphs 1 to 10, inclusive, herein.

12. The ID Mark is prior and senior to ID PHONE, as described above. Opposer's prior use of the ID Mark in connection with goods identical to goods identified by Applicant as “electronic game software for cellular telephones” supports the denial of the Application and the refusal of registration of ID PHONE.

B. Likelihood of Confusion.

13. Opposer incorporates paragraphs 1 to 10, inclusive, herein.

14. ID PHONE so resembles the registered ID Mark that when ID PHONE is used on or in connection with Applicant's proposed goods of “electronic game software for cellular telephones,” it is likely to cause confusion, or to cause mistake, or to deceive.

15. ID PHONE, according to the Application, is going to be used by Applicant in connection with the “electronic game software for cellular telephones.” Opposer has continuously and prominently used the ID Mark in connection with computer games, computer game programs and electronic games, including in connection with games operable on the cellular telephones platform.

16. Given that ID is the material element of ID PHONE and that ID is identical to the registered ID Mark and given that Applicant intends to use ID PHONE in connection with

similar goods, namely electronic game software, a likelihood of confusion, mistake or deception amongst consumers appears to be certain, as well as a loss of goodwill by Opposer.

CONCLUSION

17. For the foregoing reasons, Applicant's Application should be denied and registration of ID PHONE should be refused.

WHEREFORE, Opposer requests that ID PHONE be refused registration for “electronic game software for cellular telephones” in IC 009 and that Applicant's Application be denied in that respect.

DATED: August 30, 2007

Respectfully submitted,

**HIERSCHE, HAYWARD, DRAKELEY
& URBACH, P.C.**

By: /dwc/
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**ATTORNEYS FOR OPPOSER
ID SOFTWARE, INC.**